

REMARKS

The comments of the applicant below are each preceded by related comments of the Examiner (in small, bold type).

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 3, 2007 has been entered.

The applicant notes that office action has been incorrectly designated as a final office action. In June 2007, Jennifer Payne, a paralegal at Fish & Richardson P.C., called the Examiner's supervisor, David Wiley, to confirm that the office action is indeed a non-final office action. Ms. Payne informed Examiner Wiley that the current action is the first office action that was mailed after the applicant filed an RCE on April 3, 2007. Ms. Payne also pointed out that the current office action contains no ending paragraph to indicate that it is a final office action. Examiner Wiley confirmed that the "FINAL" box on the front page of the office action was mistakenly checked and informed Ms. Payne that the PTO would send a notice to indicate that the office action is non-final. No such notice has been received. Furthermore, PAIR currently indicates that the office action is final.

The applicant respectfully requests the Examiner to correct the status of the current office action to indicate that it is non-final.

Claims 1-5, 11-15, 21-25, 31-38, 40-44, 46-49, 51, 54, 55, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view of USPN 6,317,787 issued to Boyd et al. In further view of Network Working Group Request for Comments: 1739 submitted by Kessler et al, in further view of USPN 6,055,572 issued to Saksena..

As amended, claim 1 requires the server log to have user-interaction records indicative of user interactions that occur with one or more applications running on the selected server and that are carried on communications associated with routings through nodes of the network. Claim 1 also involves determining correlations between the routings of the communications and assessments of network performance experienced by the users and modifying one or more of the routings based on the correlations to improve the performance of the communications.

Regarding claims 1, 11, and 21, Haggard et al. teach ...

However, Haggard et al. fail to explicitly teach: accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server ...

The applicant agrees that Haggard fails to explicitly teach a server log having records indicative of routings through nodes of a network.

Kessler et al. teach accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server ... (Section 2.2 PING, and Section 2.4 TRACEROUTE).

Kessler neither discloses nor suggests routings of communications that carry user interactions that occur with one or more applications running on the selected server. In this regard, the ping function of Kessler simply determines whether a server is active by sending an echo message to the server and measuring the round-trip delay of the message. The ping function is nowhere disclosed or suggested to carry user interactions that occur with one or more applications running on the selected server. Rather, it is simply used to determine whether the server is operational.

The traceroute function of Kessler also does not provide routings of communications that carry user interactions that occur with one or more applications running on the selected server. Rather, according to page 7 of Kessler, "Traceroute works by sending a sequence of User Datagram Protocol (UDP) datagrams to an invalid port address at the remote host." Thus, the route returned by the traceroute function is not associated with communications that carry user interactions that occur with one or more applications running on the server.

Boyd et al. teach ...

The records stored in the server log of Boyd, which describe traffic data hits, are neither disclosed nor suggested to be user-interaction records indicative of user interactions that occur with one or more applications running on the selected server and that are carried on communications associated with routings through nodes of the network. For example, the table at col. 5, lines 29-40, of Boyd describes the various fields contained in a record; however, none of the fields include routings of communications through nodes of the network.

Saksena teaches ...

Saksena is directed to creating pathfiles for predicting patterns of web surfaces. According to Saksena, "[a] pathfile contains the list of documents recommended by the author for prefetching."¹ A pathfile is nowhere disclosed or suggested to be or to include routings of communications that carry user interactions that occur with one or more applications running on the selected server. Saksena does not describe anything that would remedy the deficiencies of Haggard, Boyd, and Kessler with respect to the routings recited in claim 1.

Regarding claims 2, 12, and 22 ...
Regarding claims 3, 13, and 23 ...
Regarding claims 4, 14, and 24 ...
Regarding claims 5, 15, and 25 ...
Regarding claim 31 ...
Regarding claims 32, 40, and 46 ...
Regarding claims 33 and 41 ...
Regarding claims 34, 42 and 47 ...
Regarding claim 35 ...
Regarding claim 36 ...
Regarding claims 37, 43 and 48 ...
Regarding claims 38, 44 and 49 ...
Regarding claims 51, 55, and 59 ...
Regarding claims 54 and 58 ...
Claims 39, 45 50, 53, 57 and 61 ...

Independent claims 11 and 21 are patentable for at least the reasons for which claim 1 is patentable. All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

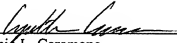
¹ Saksena at col. 5, lines 44-45.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

The requisite fee for a three-month extension of time is being paid electronically with this submission. Please apply any deficiencies or credits to deposit account 06-1050, reference 10559-096001.

Respectfully submitted,

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